

**Final Draft: Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land
Uses within the Coastal Nonpoint Management Area**

NOAA Comments July 2012

General:

- The way the material is presented, it's still very confusing what is required for TMDL Implementation plans for urban/rural residential DMAs within the Coastal Nonpoint Management Area. Some statements include "must/required" language regarding stormwater management controls while others include "recommended" language.
- The CZARA new develop measure ONLY pertains to reducing post-development TSS loadings by 80% or so that the average annual TSS loadings are no greater than predevel loadings and mainting post-devel peak runoff rate to pre-devel levels. It does NOT include riparian protection or erosion and sediment control BMPs which are also listed among the recommended BMPs for addressing the new devel MM in this document. Therefore, the sections that discuss the recommended BMPs for meeting the CZARA new devel MM requirements need to be revised.
- Please make sure you are describing the CZARA Section 6217 correctly throughout the document. The program is jointly administered by NOAA and EPA (not just NOAA) as is authorized under CZARA (not the CZMA).
- Draft would greatly benefit from a thorough review by copy editor to clean up typos, clarify/tighten writing (Plain Language always best), and remove redundancies (many concepts and info seem to be repeated multiple times in the document). As currently written, some sections are still rather awkward which prevents the document from being as helpful to DMAs as it could be (rather, it may create unnecessary confusion).

Specific:

- Pg. 1—Item 1b should read: "National Coastal Nonpoint Pollution Control Program requirements under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA)" (or something similar. Note CZARA is administered by NOAA and EPA and is authorized under CZARA not the CZMA. If you would like, you could also include the formal citation (16 U.S.C. §1455b).
- Pg. 4 (purple inset box)—What are you referring to by "these"? ("By including these stormwater management requirements...." I assume you mean the CZARA new devel MM and NPDES Phase I & II requirements but it's not entirely clear.
- Pg. 5 (2nd para under 1.4)—Last sentence states that DMAs must identify stormwater control measures using voluntary and regulatory approaches in their TMDL Implementation Plan. This is

good but could be stronger by specifically stating “stormwater control measures consistent with the CZARA 6217 new development management measure.”

- Pg. 6 (italicized sentence after inset box)—I’m confused by this statement: “This is guidance and it is the responsibility of each DMA to determine how best to comply with state and federal regulations.” It appears to conflict with sentence noted above on pg 5 that says DMAs “must identify stormwater control measures” (and many following statements that also include “must” or “require” language. Including the 2nd para under 1.4.1 TMDL Program which states: “DEQ has authority to develop TMDLs and require TMDL Implementation Plans from DMAs...” as well as the 5th para which states: “[DMAs] are required to include adequate stormwater control measures that the address the CZARA 6217 New Development Management Measure in the TMDL Implementation Plan.” So which is it? Does DEQ only have the authority to require TMDL Implementation Plans but not their content? That’s not what I understood from previous conversations or from the statement the 5th para makes. The statement in the 5th para is great but the bold italicized sentence proceeding it makes me question its validity and I imagine would create a lot of confusion for DMAs as well trying to follow this guidance. Do Urban DMA Implementation plans within the 6217 management area HAVE to include stormwater control measures to address the 6217 new devel MM or is that optional? If optional and Oregon DEQ has no way of requiring implementation of the new devel MMs then, I don’t think this “guidance document” will satisfy the new devel MM. You need to make sure your statements regarding the stormwater requirements are clear and consistent throughout. Also, please remember CZARA is a federal act, not a regulation so if by “regulations” in the bold italicized sentence you are implying CZARA, it’s not an appropriate reference.
- Pg. 9 (1.5.2.1)—First bullet good statement: “Must meet all TMDL rule and CZARA 6217 elements.” However, may want to clarify that while it would be great to meet ALL CZARA 6217 element (i.e., OSDS included), that is not (I believe?) what is meant by this statement. Rather, meeting CZARA 6217 new development requirements is what is really implied, correct?
- Pg. 12 (1.5.2.2)—The 3rd para adds to the confusion as to what DMAs actually need to include in their Implementation Plans as it conflicts with some of the previous statements (noted above). This para notes: “the TMDL Implementation plan is recommended to identify BMPs for a comprehensive stormwater (water quality and quantity) management program....” (emphasis added). I thought implementation plans had to include adequate stormwater control measures to address CZARA 6217 new devel?
- Pg. 12 (1.5.2.2, 4th para)—I’ll defer to EPA has the technical experts but in my opinion, only BMPs for post-construction stormwater management for new and redevelopment would be appropriate BMPs to address the 6217 new devel MM. The other recommended BMPs, including sediment and erosion control, address other CZARA MMs but are not appropriate for meeting new devel requirements.

- Pg. 14 (1.5.2.3, 1st para)—Again, need to be careful how you describe the CZARA program. It is jointly administered by NOAA and EPA and is not under the CZMA. I would revise the 1st sentence to simply read: “CZARA Section 6217 requires 15 urban management measures....”
- Pg. 14 (1.5.2.3, 2nd para)—I would strike this entire para. It is not needed and includes time sensitive info that may become (hopefully) out of date in the near future.
- Pg. 14 (1.5.2.3, 3rd para)—Again, creating additional confusion by moving back and forth between “required” and “recommended” language. Here it states: “These measures [6217 new devel measures] are recommended to be met by the ... DMAs...”
- Pg. 14 (1.5.2.3, Recommended Measures)—As noted on comment for Pg. 12, although I’ll defer to EPA, it’s my understanding that ONLY the TSS measure, Post-Construction Stormwater Runoff, and Pre-Development Hydrology measure BMPs would be appropriate for meeting the CZARA new devel requirements. The other recommended BMPs are good and may be useful to still include in the guidance but should not be presented as BMPs that would enable the DMA (and the state, for that matter) to meet the new devel MM requirement. In addition, for CZARA purposes, we’ve already exempted all states from the erosion and sediment control requirements because that is being met through the NPDES Phase II Construction Stormwater Control Permits.
- Pg. 18 (1.5.2.4, Pollution Prevention/Good Housekeeping)—1st para states that “...DMAs not covered under a MS4 permit must include in the TMDL Implementation plan, stormwater control measures using voluntary and regulatory approaches.” Again, adds to confusion because the “must” language is used here. Also, you’ve reiterated this concept multiple times already (although not consistently). It may help to avoid confusion if you pick ONE place to clearly and decisively state what DMA Implementation plans must include regarding stormwater control rather than repeat yourself multiple times throughout the document.

The para goes on to explain that if DMAs don’t use regulatory controls, they must provide reasonable explanation that similar or greater protection is expected through voluntary approaches and they must specify how they will measure effectiveness and put in place provisions if the voluntary measures do not work. This is excellent! However, the stormwater discussion and requirements(?) are dribbled out throughout the document. It would be much more useful to DMAs if all the requirements related to stormwater are captured clearly in one section and not presented in dribs and drabs that DMAs have to hunt for throughout the doc (which has a much higher likelihood of being overlooked).

- Pg. 76 (3.11.2.3, Ordinances Recommended to Meet CZARA New Devel MMs)--As noted above, although I’ll defer to EPA, it’s my understanding that ONLY the Post-Construction Stormwater ordinance would be appropriate for meeting the CZARA new devel requirements. The other ordinances satisfy other CZARA MM requirements but not those for new devel and should be removed from the list.

- Pg. 151 (Appendix F)—Many of your waterbodies are listed for temperature but this list of BMPs does not include BMPs to address temperature. It would be very helpful if you also include BMPs that would be appropriate for addressing temperature issues.
- Pg. 160 (and others as appropriate, Appendix G)—Adopting a stormwater ordinance is a good performance BMP but the ordinance should not just be to maintain runoff volumes approx. the same as pre-devel rates but also to control TSS (80% reduction per 6217 (g) measure requirements).
- Pg. 164 (Appendix G)—I thought adopting stormwater controls consistent with (g) guidance were needed for all DMAs in the 6217 management area? Why, then, is adopting a stormwater control ordinance that controls water quality and sediment only included as a recommended BMP for Sediment Pollutant (shouldn't it be a recommended BMP for ALL pollutants to be consistent with the statements made earlier in the document?). Developing a stormwater mangt plan (as described in this appendix is not sufficient). If the plan included specific actions to control and treat soil laden runoff from new and redevelopment consistent with the (g) guidance, that would be better.
- Pg. 233 (Appendix O)—Not sure why the lead-in para has to limit the model ordinance just to communities that need to meet NPDES requirements. I thought all DMAs needed to include stormwater controls in their Implementation Plans so wouldn't it be a useful guidance for all DMAs within the 6217 management area, regardless of whether or not they have to comply with NPDES too?